

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
DWAYNE LAMONT SLATER,
Defendant.

No. 2:03-CR-00371-MCE

ORDER

Defendant Dwayne Lamont Slater ("Defendant") pled guilty to nine counts of armed bank robbery in violation of 18 U.S.C. § 2113(a) and (d) and two counts of use of a firearm during and in relation to a crime of violence in violation of 18 U.S.C. § 924(c)(1). He was sentenced on April 29, 2010, to three hundred (300) months of imprisonment. Presently before the Court is Defendant's Motion to Vacate and/or Reduce Sentence. ECF No. 1166. The Government opposes Defendant's request. ECF No. 1179. For the reasons that follow, his Motion is DENIED.

Defendant contends that "extraordinary and compelling circumstances" exist such that he should be released prior to his current anticipated release date in January 2025. More specifically, Defendant asks the Court to grant him compassionate release "in light of the COVID-19 pandemic and its outbreak at Butner prison complex, his high-risk health issues, exceptionally good prison conduct, the First Step Act, and all the

1 sentencing factors set forth in 18 U.S.C. § 3553(a).” Def.’s Mot., ECF No. 1166, at 1.
 2 The primary impetus for Defendant’s Motion is that he “is at very-high risk for more
 3 severe complications from COVID-19 due to multiple comorbidities.” Id. at 11. “Recent
 4 BOP medical records confirm that [Defendant] suffers from obesity, high blood pressure,
 5 prediabetes, congenital scoliosis, chronic pain, and peripheral neuropathy.” Id.
 6 Defendant thus seeks release both given his decline in health and the additional risks
 7 posed now that we are in the midst of a viral pandemic to which he is particularly
 8 susceptible. Though these conditions are both serious and chronic, Defendant’s release
 9 would nonetheless be inappropriate.

10 “[A] judgment of conviction that includes [a sentence of imprisonment] constitutes
 11 a final judgment’ and may not be modified by a district court except in limited
 12 circumstances.” Dillon v. United States, 560 U.S. 817, 824 (2010) (alterations in original;
 13 quoting 18 U.S.C. § 3582(b)). Those circumstances are delineated in 18 U.S.C.
 14 § 3582(c). “Effective December 21, 2018, the First Step Act of 2018 amended 18 U.S.C.
 15 § 3582(c)(1)(A) to permit an inmate, who satisfies certain statutorily mandated
 16 administrative procedures, to file a motion with the district court for compassionate
 17 release.” Riley v. United States, 2020 WL 1819838, at *5 (W.D. Wash. Apr. 10, 2020)
 18 (citing 18 U.S.C. § 3582(c)(1)(A)). That statute now provides:

19 **(c) Modification of an imposed term of imprisonment.—**

20 The court may not modify a term of imprisonment once it has
 been imposed except that—

21 (1) in any case—

22 (A) the court, upon motion of the Director of the Bureau of
 23 Prisons [(“BOP”)], or upon motion of the defendant after the
 24 defendant has fully exhausted all administrative rights to
 25 appeal a failure of the [BOP] to bring a motion on the
 26 defendant's behalf or the lapse of 30 days from the receipt of
 27 such a request by the warden of the defendant's facility,
 28 whichever is earlier, may reduce the term of imprisonment
 (and may impose a term of probation or supervised release
 with or without conditions that does not exceed the unserved
 portion of the original term of imprisonment), after considering
 the factors set forth in section 3553(a) to the extent that they
 are applicable, if it finds that—

(i) extraordinary and compelling reasons warrant such a reduction;

....

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission

18 U.S.C. § 3582(c)(1)(A)(i).

“Thus, the First Step Act amended § 3852(c)(1)(A) to allow prisoners to directly petition a district court for compassionate release, removing the BOP’s prior exclusive gatekeeper role for such motions.” Riley, 2020 WL 1819838, at *5. “The statute now provides the court with authority to reduce a sentence upon the motion of a defendant if three conditions are met: (1) the inmate has either exhausted his or her administrative appeal rights of BOP’s failure to bring such a motion on the inmate’s behalf or has waited until 30 days after the applicable warden has received such a request; (2) the inmate has established ‘extraordinary and compelling reasons’ for the requested sentence reduction; and (3) the reduction is consistent with the Sentencing Commission’s policy statement.” Id. (footnote omitted).

The starting point for the policy statement referenced in the third prong is United States Sentencing Guidelines (“USSG”) § 1B1.13, which provides:

[T]he court may reduce a term of imprisonment (and may impose a term of supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment) if, after considering the factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable, the court determines that--

(1)(A) Extraordinary and compelling reasons warrant the reduction; or

(B) The defendant (i) is at least 70 years old; and (ii) has served at least 30 years in prison pursuant to a sentence imposed under 18 U.S.C. § 3559(c) for the offense or offenses for which the defendant is imprisoned;

(2) The defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g); and

(3) The reduction is consistent with this policy statement.

1 Since Defendant was not sentenced pursuant to 18 U.S.C. § 3559(c), he is only
2 “entitled to relief if he demonstrates that (1) extraordinary and compelling reasons
3 warrant a sentence reduction, (2) he is not a danger to the safety of others or the
4 community, and (3) any requested reduction is consistent with the policy statement.”
5 Riley, 2020 WL 1819838, at *6.

6 “The Sentencing Commission’s application notes to this policy statement provide
7 further guidance.” Id. Indeed, the notes explain that “extraordinary and compelling
8 reasons” exist when:

9 (A) Medical Condition of the Defendant.

10

11 (ii) The defendant is—

12 (I) suffering from a serious physical or medical
13 condition,

14 (II) suffering from a serious functional or
cognitive impairment, or

15 (III) experiencing deteriorating physical or mental
16 health because of the aging process,

17 that substantially diminishes the ability of the
18 defendant to provide self-care within the
environment of a correctional facility and from
which he or she is not expected to recover.

19 U.S.S.G. § 1B1.13 cmt. n.1 (emphasis added).

20 Here, Defendant contends he suffers from serious physical or medical conditions
21 that make him particularly vulnerable to COVID-19 such that he qualifies for release.
22 The burden is on Defendant. United States v. Holden, 2020 WL 1673440, at *3 (D. Or.
23 Apr. 6, 2020). He has not met that burden here.

24 Having presided over this case for years, including through trial and sentencing of
25 Defendant’s co-defendants, the Court is intimately familiar with both this Defendant and
26 the facts of this case. As a result, after consideration of the foregoing, including the
27 factors under 18 U.S.C. § 3553(a), it absolutely agrees with the Government that, even
28 assuming Defendant’s medical conditions are sufficient to qualify him for consideration

1 for release, such release would be inappropriate because he is a danger to the
2 community.

3 This case arose from a violent armed robbery ring that was Defendant's
4 brainchild. The Government aptly describes the havoc wreaked as follows:

5 [T]he facts of the armed bank robberies organized by
6 [Defendant] are horrific. The robbery crews . . . repeatedly put
7 innocent bank employees and patrons in fear of their lives in
8 an effort to greedily collect easy money. [Defendant's]
9 leadership demonstrated a singular focus on ruthless
10 efficiency in getting to the vault, grabbing the cash, threatening
11 anyone in the way, and removing evidence of the crimes by
12 attempting to remove video recordings. [Defendant's] crimes
13 demonstrate an unmitigated callousness that undermines his
14 motion for compassionate release. The robbery crews under
15 [Defendant's] command showed no compassion to their
16 victims . . .

17 Gov. Opp. at 20.

18 Somewhat shockingly, Defendant's criminal history is even worse. Before
19 Defendant came before this Court, he had already been convicted of, among other
20 things, rape and first degree murder. This is unbelievable. This Court simply does not
21 see first degree murder in individual's criminal histories here because the state has
22 typically incarcerated those individuals for very lengthy periods of time. It can only
23 surmise that Defendant is an anomaly because he was 17 at the time of the murder and
24 thus was a juvenile. Regardless, Defendant clearly learned nothing from that experience
25 since he ended up before this Court on the instant charges.

26 At base, Defendant's only track record when not in prison is one of violence,
27 mayhem, and destruction. While the Court commends Defendant for his record in prison
28 and encourages him to continue to try to better himself in anticipation of his eventual
release, based on this track record, the Court can only conclude that Defendant remains
a danger to society.

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1 Having found that Defendant is a danger to the community and having considered
2 all of the factors set forth in 18 U.S.C. § 3553(a), the Court thus concludes that release
3 would be inappropriate. Defendant's Motion to Reduce Sentence (ECF No. 1166) is
4 DENIED.

5 IT IS SO ORDERED.

6 Dated: July 30, 2020

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8 MORRISON C. ENGLAND, JR.
9 SENIOR UNITED STATES DISTRICT JUDGE
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